

UNITED STATES DISTRICT COURT

for the
District of New MexicoFILED
United States District Court
Albuquerque, New MexicoMitchell R. Elfers
Clerk of CourtIn the Matter of the Search of
(Briefly describe the property to be searched
or identify the person by name and address)
Body of Rodgerick TSOSIE

Case No. MR 22-839

APPLICATION FOR A WARRANT BY TELEPHONE OR OTHER RELIABLE ELECTRONIC MEANS

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property (identify the person or describe the property to be searched and give its location):
The body of Rodgerick TSOSIE

located in the _____ District of _____ New Mexico _____, there is now concealed (identify the person or describe the property to be seized):
DNA which will be extracted by way of buccal swab

The basis for the search under Fed. R. Crim. P. 41(c) is (check one or more):

- ☒ evidence of a crime;
☐ contraband, fruits of crime, or other items illegally possessed;
☐ property designed for use, intended for use, or used in committing a crime;
☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

<i>Code Section</i>	<i>Offense Description</i>
18 U.S.C. § 1153	Offenses Committed in Indian Country
18 U.S.C. § 1111(a)	2nd-Degree Murder

The application is based on these facts:
See attached affidavit.

- ☒ Continued on the attached sheet.
☐ Delayed notice of _____ days (give exact ending date if more than 30 days: _____) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

Applicant's signature

Molly Schommer, FBI Special Agent

Printed name and title

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by
_____ telephone _____ (specify reliable electronic means).

Date: 05/25/2022

Judge's signature

City and state: Albuquerque, New Mexico

Kirtan Khalsa, United States Magistrate Judge

Printed name and title

AFFIDAVIT IN SUPPORT OF A SEARCH WARRANT

AFFIDAVIT IN SUPPORT OF AN APPLICATION FOR A SEARCH WARRANT

INTRODUCTION AND BACKGROUND

1. I, Molly Schommer, being first duly sworn, make this affidavit in support of an application under Rule 41 of the Federal Rules of Criminal Procedure for a warrant to search the body of Rodgerick TSOSIE, Year of Birth (“YOB”) 1993, to collect Deoxyribonucleic Acid (“DNA”) samples by way of buccal swabs. I believe TSOSIE’S DNA may be present on several rifles that were located in a F350 truck outside of TSOSIE’S sister house, which TSOSIE visited the night of the incident. TSOSIE is currently in custody at Cibola County Correctional Center (“CCCC”) pending charges of 18 U.S.C. § 1153 and 1111(a), that being Offenses Committed within Indian Country and 2nd-Degree Murder.

2. I am a Special Agent with the Federal Bureau of Investigation (“FBI”) and have been so employed since April of 2021. As such, I am a federal law enforcement officer within the meaning of Rule 41 of the Federal Rules of Criminal Procedure. I am currently assigned to the Violent Crime Task Force (“VCTF”) at the Albuquerque Field Office of the FBI. I primarily investigate Indian Country cases, such as homicide sexual assault, along with gang-criminal enterprises and Drug Trafficking Organizations (“DTOs”) involved in the unlawful possession of firearms, distribution of controlled substances, racketeering activities, and conspiracies associated with these offenses. I have received on the job training from other experienced agents, detectives, and correctional officers in the investigation of gangs and criminal organizations. My investigative training and experience includes, but is not limited to, the FBI Training Academy at Quantico, Virginia; interviewing subjects, targets, and witnesses; writing affidavits for, and executing search and arrest warrants; collecting evidence; conducting surveillance; and analyzing public records. In addition, I have received advanced training and instruction from local agencies related to Indian

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Country offenses and narcotics and firearms trafficking. Through my training and experience both as an FBI Special Agent and city and county prosecutor, I am familiar with techniques used by criminal actors, DTOs, gangs, and criminal enterprises.

3. As a result of my training and experience and my knowledge of this investigation, I know that firearms are tools of the trade and instrumentalities of criminal enterprises, particularly in instances involving homicides by gunshot. Additionally, persons who commit homicides with firearms tend to have that firearm on their person, in their residence, or left at an alternative location after the homicide is committed. I am also aware that when individuals handle firearms and other objects, their DNA is often left behind and is detectable by lab technicians.

4. The facts in this affidavit come from my personal observations, my training and experience, and information obtained from other law enforcement agencies, agents, and witnesses. Because this affidavit is submitted for the limited purpose of securing a search warrant, I have set forth only those facts I believe are necessary to establish probable cause to support a search warrant to collect TSOSIE'S DNA.

STATEMENT OF PROBABLE CAUSE

5. In the afternoon of May 16, 2022, there was a dispute at TSOSIE'S mother's home in Torreon, New Mexico, which is within the exterior boundaries of the Navajo Nation and considered Indian Country. The dispute involved TSOSIE'S brother, A.T., YOB 1981, hereinafter "witness 1", who is also the father of the 14-year-old victim, H.T., YOB 2007, hereinafter "John Doe". John Doe is TSOSIE'S nephew. Witness 1 was at his mother's house with his girlfriend, A.W., YOB 1986, hereinafter "witness 2". They were both inebriated and arguing. During the dispute, TSOSIE was called and asked to help as he does not drink alcohol. Prior to TSOSIE'S

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arrival, witness 1 left with his three sons, including John Doe, and witness 2 in witness 2's silver jeep.

6. Around 6:25 p.m., on May 16, 2022, an off-duty Emergency Medical Technician ("EMT"), G.S., YOB 1978, hereinafter "witness 3", was at the Torreon Store in Cuba, New Mexico. Witness 3 first saw a silver sedan travelling west bound on New Mexico State Road 197 near Rincon Marques Road, which is within the exterior boundaries of the Torreon Chapter of the Navajo Nation, at a high rate of speed. The silver sedan had one occupant in the front, that being the driver who was a male with short hair. Witness 3 then saw a silver jeep in the right lane travelling east with a silver sedan beside them also travelling east but in the left west bound lane. Witness 3 heard sounds described as, "pop, pop," which witness 3 believed to be two gunshots. The silver jeep stopped, witness 2 exited from the driver's seat, opened the back driver's door, and began screaming. The silver sedan continued east bound. Witness 3 then saw the silver sedan come back, travelling west at a high rate of speed, and continue past the silver jeep. The silver jeep then sped east bound.

7. Witness 3 called 911 and responded to the silver jeep. Witness 3 saw witness 2 holding pressure to John Doe's head and observed what she described as "brain matter" on John Doe's shirt. Witness 3 also saw a young child in the backseat with John Doe. Witness 3 asked, "Do you know who did this?" Witness 1 responded, "Yeah, my brother, Rodger TSOSIE."

8. Witness 3 assisted in transporting John Doe via ambulance after other EMTs responded. John Doe was then picked up by a medivac helicopter and brought to St. Vincent Hospital in Santa Fe, New Mexico, where he was pronounced dead at 8:31 p.m.

9. Navajo Nation Police Department ("NNPD") and Sandoval County Sheriff's Office ("SCSO") responded to the dispatch call at Torreon Store. Upon arrival, NNPD officers and SCSO

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deputies encountered a silver jeep with the rear driver's seat window shattered out. Inside of the vehicle in the rear seat were two juvenile boys. The seat directly behind the driver's seat was determined to be where John Doe was sitting prior to being taken by witness 3 in ambulance to be medically evacuated. Also present were witness 1 and witness 2.

10. Witness 1 told deputies and officers that his brother, TSOSIE, shot the window. Additionally, witness 1 indicated TSOSIE lives in Pintado by the old school and that TSOSIE has a 9mm pistol and .30-.30 rifle. Furthermore, TSOSIE'S driver's license photograph was shown to witness 1, who confirmed that the individual in the photograph was TSOSIE and was the one who shot John Doe.

11. Witness 2 was driving the silver jeep and had two other children in the backseat along with John Doe. Witness 2 told deputies and officers that TSOSIE'S vehicle was a silver sedan with tinted windows. Witness 2 passed the silver sedan. The silver sedan then came up to witness 2's jeep, passed by them, shot, and took off. Witness 2 indicated TSOSIE was in a rampage. Additionally, witness 2 provided both verbal and written consent to search the silver jeep.

12. The silver jeep was towed to FBI Albuquerque in Albuquerque, New Mexico, and searched on May 17, 2022. Located inside of the silver jeep was a bullet fragment of unknown caliber.

13. In the late evening of May 16, 2022, deputies, officers, and agents went to the address where TSOSIE was believed to be at in Pueblo Pintado, New Mexico. A silver sedan was parked outside of the address. TSOSIE was arrested in the early morning hours of May 17, 2022. Agents read TSOSIE his *Miranda* rights, which TSOSIE indicated he did not have questions about and agreed to speak with agents. TSOSIE was made aware that his nephew, John Doe, had been

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shot and killed. TSOSIE made statements about wrestling with his brother, Witness 1, over a .22 rifle outside of his mother's home. At some point the .22 rifle went off and John Doe, who was seated in the back of the silver jeep at the time, was shot. TSOSIE indicated he left the .22 rifle at his mother's house in Witness 1's room. TSOSIE later stated that he passed the silver jeep near Rincon Marques Road and while passing he heard two pops, which he thought sounded like gunshots.

14. Part of the interview was done in the Navajo language with a Navajo Criminal Investigator. During that part of the interview, TSOSIE admitted he had a .22 rifle at some point and indicated he took a warning shot stating, "I guess I'll take the fall for it." TSOSIE was asked if two gunshots were fired, which TSOSIE responded, "No, just the one shot." When asked if TSOSIE shot at the vehicle, TSOSIE stated, "Yeah, I guess I did, but I guess I'll take the fall for it." After these statements, TSOSIE would revert back to his story about what happened outside of his mother's house.

15. Agents and NNPD officers then went to TSOSIE'S mother's house to obtain the rifle. However, TSOSIE'S family members were unaware of any firearms being in the house and stated Witness 1 and TSOSIE were not at the house at the same time on the afternoon and evening of May 16, 2022.

16. Furthermore, TSOSIE'S sister, C.T., YOB 1976, hereinafter "witness 4", spoke about a dispute that happened in the afternoon of May 16, 2022. TSOSIE came over to the house but witness 1 was not at the house at that time. TSOSIE arrived at the house around 6:00 p.m. and left around 7:00 p.m. or 8:00 p.m. TSOSIE told witness 4 that he came across witness 1 and his children on the road to her house but he did not bother them. Witness 4, who would have been some distance away, did not hear gunshots and did not know of any guns.

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17. On May 17, 2022, TSOSIE was arrested by NNPD on a criminal homicide charge. On May 18, 2022, TSOSIE was brought into federal custody pursuant to Federal Arrest Warrant MJ 22-820 and transported from Navajo Department of Corrections, Crownpoint, New Mexico, to CCCC.

18. On May 19, 2022, FBI Agents and a Criminal Investigator with NNPD went back to TSOSIE'S mother's house to look for a possible firearm involved with the homicide. There were two buildings on the premises each with several vehicles parked out front. The first building belonged to TSOSIE'S mother, M.T., YOB 1952, hereinafter "witness 5", who gave consent for her building to be searched. There was nothing of relevance found in witness 5's home, the surrounding area, nor in any vehicles parked outside.

19. Witness 1's room, which was inside of witness 5's home, was locked. Witness 1 came to witness 5's home, gave consent for his room to be searched, and opened the door. No firearm was found in Witness 1's room. Witness 1 indicated his mother owned a .22 caliber rifle that she kept in a specific location. Agents checked that location, and no rifle was found. Witness 1 also indicated TSOSIE owned a lighter brown beige .30-.30 rifle or .30-06 rifle with a scope that he always carried with him, and, awhile back, TSOSIE told witness 1 he was going to buy a pistol.

20. The second building belonged to witness 4 who also gave consent for it to be searched. There was nothing of relevance found in witness 4's home. Witness 4 then informed Agents that she initially lied about there not being any firearms and told agents about the rifles in the back seat of a F350 truck parked outside of her home. Witness 4 told agents that she put the rifles in the truck when she moved to that address.

21. The following rifles were located, seized, and are currently in FBI evidence in Albuquerque, New Mexico:

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- a. A MA Lithgow SMLE III 1941, unknown caliber, serial number C16828, with a scope and one empty magazine;
- b. A Marlin model 81TS micro-groove barrel, .22 caliber SL and LR, serial number 99395836, with a scope;
- c. A Savage Stephens model 987, .22 caliber long rifle, serial number E247549, with a scope;
- d. A Savage Springfield model 120 series A, .22 short long or long rifle, serial number P430866; and
- e. A Sears, Roebuck, and Co. model 1, .22 caliber SL or LR, serial number 27327010.

CONCLUSION

22. Based on the information contained herein, I believe probable cause exists indicating TSOSIE violated 18 U.S.C. § 1153 and 1111(a), that being Offenses Committed within Indian Country and 2nd-Degree Murder. As such, I am seeking authorization to collect DNA samples from TSOSIE to be utilized in the examination of the evidence collected in this matter, specifically to compare with any DNA that is found on evidence collected in this matter.


23. The rifles were collected for further testing. I intend to send the rifles, scopes, and magazine to the FBI Laboratory for latent fingerprint and DNA testing. I will request the laboratory compare any potential DNA found on the rifles, scopes, and magazine to the DNA of TSOSIE.

24. Based on the information contained herein, I believe probable cause exists to search TSOSIE for the purpose of obtaining DNA samples by buccal swabs pursuant to Rule 41 of the Federal Rules of Criminal Procedure.

25. This affidavit was reviewed and approved by Assistant United States Attorney Alexander Flores.

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Respectfully Submitted,


Molly Schommer
Special Agent
Federal Bureau of Investigation

SUBSCRIBED TO AND SWORN ELECTRONICALLY ON MAY 25, 2022.


HONORABLE KIRTAN KHALSA
UNITED STATES MAGISTRATE JUDGE
DISTRICT OF NEW MEXICO

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ATTACHMENT A

Person to Be Searched

The person to be searched is Rodgerick TSOSIE, DOB 01/01/1993, whose photograph is shown below:



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ATTACHMENT B

Property to Be Seized

1. DNA samples, via buccal (cheek) swabs from Rodgerick TSOSIE. -